

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 31.10.2013
Pronounced on: 15.01.2014

+ **LPA 1670-71/2006**

GOVT. OF NCT OF DELHI AND ANR. Appellants
Through: Ms. Tania Ahlawat, for Ms.
Avnish Ahlawat, Advocate.

versus

THE SHREEYANS EDUCATIONAL SOCIETY AND ANR.
..... Respondents
Through: Sh. Anil Sapra, Sr. Advocate with
Sh. Tanuj Khurana, Sh. Gaurav Malik and
Ms. Rupali Kapoor, Advocates, for Resp.
No.1.
Ms. Shobhana Takiar with Ms. Ritagya
Ruhi, Advocates, for DDA.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

%

1. These appeals by the Government of NCT of Delhi (hereafter referred to as “the GNCT”) challenges a judgment and order of a learned Single Judge dated 04.05.2006. The impugned judgment quashed an order of the GNCT of 02.04.2004 which withdrew the sponsorship of Shreeyans Educational Society (hereafter referred to as “Shreeyans”), the first respondent, which then approached the Court in writ proceedings. Shreeyans had, besides challenging the

withdrawal of sponsorship, sought direction for allotment of land for establishing a school.

2. The brief facts are that Shreeyans had, on 30.06.2000, applied to the Directorate of Education (hereafter referred to as the “DoE”) for issuance of Essentiality Certificate (hereafter referred to as “EC”) to establish a middle school in Vasant Vihar, in the Vasant Kunj area. The application requested EC *“for opening a new middle school in Zone South West”*. The application did not specify any particular colony or locality. Whilst filling up the proforma required to be submitted by the DoE GNCT, Shreeyans specified that it sought allotment of land in *any zone of south Delhi*. The Education Officer of the DoE on 23.03.2001 requested the applicant Shreeyans to submit or apply for issuance of EC *“at some other alternative site”*. The response given by Shreeyans was for a site in either of the four places it indicated – Mahipalpur, Rajokri, Kishangarh or Samalkha. In addition, Shreeyans indicated that the EC or allotment could be at those sites *“or anywhere [else]”* in Zone-XXI.

3. On 08.05.2001, the concerned officer, i.e. Deputy Director of Education (DDE) issued the EC to Shreeyans Society to establish a new school in Rajokri/Samalkha (Zone-XXI) of District South West, specially limited for a period of three years. This was followed by sponsorship letter addressed to the Delhi Development Authority (DDA) on 07.02.2002. This recommended allotment of land for establishment of a middle school *“in Rajokri/Samalkha only of SW-A”*. The validity of this EC was extended upto 10.06.2004.

4. In the meanwhile, the GNCT’s letter of 02.04.2004, without

conducting any enquiry but referring to “*the cases cleared for allotment of land by the Institutional Land Allotment Committee of DDA*” withdrew the EC. The Land Allotment Committee (LAC) of the DDA had recommended allotment of a school site to Shreeyans in Vasant Kunj. The GNCT was of the opinion that Shreeyans had manipulated the recommendation for that site in respect of an area for which sponsorship had not been granted. The GNCT was of the opinion that many of such instances were noticed and, therefore, it conducted internal enquiry and withdrew the sponsorship.

5. The petitioner approached this Court urging that the sponsorship and EC is in relation to a zone and not a particular locality. Shreeyans relied upon the minutes of meeting of the LAC dated 06.09.2002 where it was decided that sponsorship would be valid for a particular educational zone in respect of which the EC is granted. Shreeyans had also relied upon this policy, spelt-out in the reply of the GNCT in another proceeding, i.e. W.P. (C) 6413/2001. Furthermore, Shreeyans relied upon the decision taken by the Court in this regard to say that sponsorship is not in respect of locality but in respect of concerned zone. It also relied upon the Institutional Branch’s instructions of the DDA dated 18.05.2001 – emphasizing that a zone-wise EC would be granted and it would not be specific to any locality. It was urged that the letter of 10.02.2006 addressed by the GNCT in response to an RTI query had accepted that Rajokri and Vasant Kunj were in Zone-XXI and thereafter both were assigned to Zone-XXII. Consequently, the withdrawal of sponsorship was impugned as arbitrary.

6. The GNCT stated in its reply that lands were allotted in zones and areas other than localities specifically recommended by the LAC. It was also contended that the prescribed EC not having been issued by the DoE for localities in which land was finally allotted, cases of such societies ought to have been processed afresh for sponsorship after modification of ECs. As this was not done in Shreeyans's case, the allotment was correctly determined to be irregular.

7. The learned Single Judge, after considering the materials on record and relying upon the decision of the Supreme Court in *S.L. Kapoor v. Jagmohan* AIR 1981 SC 137, held that absence of any notice and prior opportunity to the Shreeyans before the withdrawal of sponsorship letter was issued on 02.04.2004 vitiated the action and consequently quashed it. On the question of zone-wise sponsorship as opposed to the locality-specific sponsorship, the learned Single Judge relied upon the stand of the GNCT and the DDA in W.P.(C) 6413/2001 as well as the evidence rendered therein and concluded that the GNCT was bound by the position articulated in the materials placed on record to issue sponsorships in respect of zones and that it could not limit the operation of the certificate to any particular locality. Consequently, the learned Single Judge, after quashing the withdrawal of sponsorship letter dated 02.04.2004 also directed the DDA to further process the Shreeyans's application for allotment of land stating,

“... Eligibility would be now treated for Zone-XX. Since considerable time has passed when petitioner obtained requisite sponsorship, I direct DDA to take the final decision and communicate the same to the petitioner within 3 months from

today.”

8. The learned counsel for the GNCT argues that the learned Single Judge fell into error in holding that the sponsorship given by it extended to the entire zone for which the application had been made. It was contended that the sponsorship letter of the DDA clearly stipulated that it was valid for five years and that it would be subject to EC being valid only in the area recommended. In these circumstances, when the sponsorship limited the number of localities within the zone concerned, Shreeyans could not claim to be aggrieved. Relying upon a file noting it was contended that there were already 13 recognized and unaided private schools in the Vasant Kunj area. GNCT had issued one EC for nursery school, one for middle school and two for senior secondary schools for that year. The noting further went on to state that in view of these facts, there was no need for opening any kind of recognized unaided school in the Vasant Kunj area. It was submitted that the GNCT's decision taken on 06.09.2002 specified that sponsorship should be zone-wise and in this context, there was nothing in the policy which prevented the executive government to place a restriction upon the localities in respect of which only sponsorship was being granted. Learned counsel also submitted that on 30.07.2002, answering to Shreeyans's letter of 29.07.2002, the GNCT clearly stated that sponsorship and allotment of land would be made subject to EC being valid only in the area recommended, which meant the particular localities listed in the certificate itself. Learned counsel also relied upon the letters dated

23.03.2001 of the GNCT to Shreeyans indicating it to give the choice of particular sites and the reply dated 23.03.2001 preferring Mahipalpur, Samalkha or any other area in the concerned zone, i.e. Zone-XXI.

9. Learned counsel for the GNCT emphasized that the sponsorship/EC is to enable allotment from the land owning agency, having regard not only to the desire of the institution seeking its grant or allotment but also to service the population of the concerned areas. While doing so, the executive government takes into account the number of existing schools and whether the application seeking opening or establishment of another school would sub-serve the needs of the area. In other words, it was submitted that the GNCT has to consider the overall public good and not merely whether the applicant's request is in order while recommending allotment. Learned counsel emphasized that after the grant of the sponsorship, the DDA decided to allot land in Vasant Kunj in this particular instance, which was irregular having regard to the restricted nature of the sponsorship issued by the GNCT. Twelve similar irregularities were noticed; in all such cases, the sponsorships were revoked.

10. Shreeyans, in its submissions, reiterates that findings of the learned Single Judge did not call for interference as they were based upon a reasonable view of the materials on record and policy consistently followed by GNCT and the DDA. It was also emphasized that whilst withdrawing the sponsorship through the impugned letter, the GNCT did not care to grant any opportunity or hearing to the concerned Society or the petitioner. Learned counsel further

highlighted that the allotment of land by the DDA in 2003 having regard to the sponsorship/EC issued and that the GNCT's opinion that it was irregular, was baseless.

11. Before discussing the merits of the parties' contentions, it would be relevant to notice Rule 44 of Delhi School Education Rules, 1973 (DSER) framed under the Delhi School Education Act, 1973 prescribes for the grant of permission/sponsorship to the institutions wishing to open a new school. Pertinently, Rule 44(3) empowers the Administrator to, after considering the relevant materials and particulars of intimation given by the institution concerned, permit or refuse opening of the proposed new school, having regard to public interest. In this respect, the *proviso*, which is relevant for the purpose of this Act, indicates as follows:

“Provided that the Administrator shall, if he is of opinion that the number of schools existing in the Zone where the new school is proposed to be opened is sufficient to meet the needs of the Zone, inform the person or persons by whom the intimation was given to him that the opening of the new school in such Zone would be against the public interest and may indicate to such person or persons, any other Zone which, in his opinion, needs the establishment of a new school, and thereupon it would be open to such person or persons to open a new school in the Zone indicated by the Administrator.”

12. In this case, this Court had called for complete records of the writ proceedings. Shreeyans's application dated 30.06.2000, in column 4, mentioned that the zone in which the new school was proposed to be established was the “*South West (Vasant Vihar) in Vasant Kunj area*”. When this application was still being processed,

on 23.03.2001, the GNCT sought a further application for some other alternative site. To this, Shreeyans requested that its case for grant of EC “*may also be considered for any one of the following sites:- 1. Mahipalpur, 2. Rajokri, Kishangarh, 4. Samalkha or anywhere in Zone-XXI.*” This clearly indicated that its application and request for allotment in Zone-XXI and specifically in Vasant Kunj area had not been abandoned. In this background, the sponsorship was granted on 07.02.2002 for establishment of middle school in Rajokri, Samalkha or only of District SW-A. The LAC of DDA recommended allotment of a suitable plot in Vasant Kunj. Apparently the *ex-parte* or unilateral enquiry held into this allotment recommended cancellation which was done through the impugned order of 02.04.2004.

13. The decision of the GNCT, recorded through the minutes of the Land Allotment Committee meeting, presided by the Principal Secretary (Education), GNCT- relied on by Shreyans on 06.09.2002 recorded *inter alia* as follows:

“2. *The sponsorship will be valid only for Educational Zone of the Directorate of Education from where the EC has been issued and the DDA will allot land to the Society only in that Educational Zone. The Directorate of Education will provide a zone-wise area to the DDA to facilitate the allotment in the relevant zone.*”

14. The same minutes of meeting went on to list-out the recommendations given in respect of various societies. It is noteworthy that the overwhelming majority of recommendations did not restrict allotment – by the DDA – to any particular locality or colony but even while mentioning the concerned colony, went on to

state that *the allotment could be anywhere else in the said zone*. The reply of the GNCT given to RTI queries stated that on 08.08.2001, by Notification, the District South-West was bifurcated into two additional districts, i.e. South West-A and South West-B and changes were made in the boundaries of Zones-XX and XXI. The reply of 21.02.2006 further stated that:

“It is true that the valid essentiality certificate held by the educational society from old Zone-21 for a particular area of this Zone would be deemed as valid for that particular area and will be recognized for new Zone-20”

15. In the light of the above, the question which falls for consideration is whether the learned Single Judge’s conclusions that recommendations by the DDA for allotment at Vasant Kunj were irregular having regard to the GNCT’s policies. At the outset – as noticed by this Court earlier – the proviso to Rule 44(3) is the only statutory provision which deals with the precise question. It categorically states that sponsorship/ECs shall be in respect of concerned *zones*. Such being the case, the GNCT’s insistence that it has the further right to impose restrictive conditions while issuing certificates is facially untenable. Whilst the necessary balancing of public interest with private aspirations of the institutions is undeniable, that exercise has to be done within the framework of the rules. The DSEA is the primary legislation; rules were framed by the Central Government as far back as in 1973. Once these rules indicate the policy which the executive government – i.e. GNCT – is to follow for issuing sponsorships/ECs having regard to the concerned zones,

then in this Court's opinion, imposing restrictive conditions indicating that the ECs would apply only in respect of certain areas or localities of particular zones, travels beyond the mandate of law. Quite possibly, if Rule 44 had merely conferred powers to issue ECs, it could have been argued that restrictive conditions of the nature in issue could possibly have been imposed. However, such is not the case. Here, the legislature explicitly stated that sponsorships or ECs are to be in respect of zones, thus leaving the choice of establishing schools to the institutions concerned, having regard to their financial abilities either to purchase the plots or secure the allotment within the zone wherever such plots were made available by the land-owning agencies. The interpretation pressed upon by the GNCT, besides conflicting with the legislative policy contained in the rules, also would foster arbitrariness. In given situations, the GNCT can impose restrictive conditions whereas while granting other applications, it may choose not to impose such restrictions.

16. The interpretation placed by the learned Single Judge with which we fully agree, is based upon the decision of 06.09.2002 which apparently reiterated an earlier, similar decision taken on 29.10.2001, i.e. that sponsorship certificates would be issued *zone wise*. The absence of any discussion restricting the applicability or operation of the certificate to particular areas is a clear indication that even GNCT is of the opinion that zone-wise certificates were valid. This view is fortified by the list of 41 allotments recommended, as by against each, by and large concerned zones have been mentioned. In a few cases, the recommendations do state particular localities but care to

emphasize that allotment can be made anywhere else within the same zone. The learned Single Judge had also relied upon the stand taken by the GNCT in some other proceedings. While relevance of such material cannot be conclusive, it only goes to support the interpretation put forth by Shreeyans that GNCT itself had considering that sponsorship ought to be zone wise and an indication of that area within that zone cannot be deemed conclusive of their validity.

17. In view of the above discussion, the Court is of the opinion that the findings and conclusions of the learned Single Judge do not call for any interference. It is clarified that in case the directions of the learned Single Judge have not been complied with, in view of the pendency of the appeal, the appellants shall comply with it within eight weeks from today. The appeals are accordingly dismissed without any order as to costs.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

JANUARY 15, 2014